UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 05-44481
- -x
In the Matter of:

DELPHI CORPORATION,

Debtor.

- -x

United States Bankruptcy Court
One Bowling Green
New York, New York

January 5, 2007
10:04 AM

B E F O R E:
HON. ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

HEARING re Motion for Order (i) Authorizing Debtors to Obtain Post-Petition Financing and (ii) Authorizing Debtors to Refinance Secured Post-Petition Financing and Pre-Petition Secured Debt

HEARING re Limited Objection to the Motion for Order (i) Authorizing Debtors to Obtain Post-Petition Financing and (ii) Refinance Secured Post-Petition Financing and Pre-Petition Secured Debt filed by Howard County, Indiana

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Please be seated. Okay. Delphi Corporation?

MR. BUTLER: Your Honor, good morning. Jack Butler and Kayalyn Marafioti from the Skadden firm here representing Delphi Corporation on a specially set hearing dealing with our expedited motion for approval of a replacement debtor-in-possession financing facility. The DIP financing motion was filed at Docket number 6180.

Your Honor, there's been only one objection filed to this motion. It was the limited objection of Howard County, Indiana to the DIP at Docket number 6369 and that matter was based on a concern that Howard County had that somehow the refinancing could negatively affect their tax liens. That objection was resolved and they understood that the refinancing does not adversely in any material respect their current priority of their tax liens to secure outstanding tax claims relative to other liens. And we've assured them that the tax liens will have the same priority relative to the first priority DIP liens as they currently have relative to the existing DIP liens and will have the same priority relative to the second priority DIP liens as they currently have relative to the liens held by the pre-petitioned secured lenders. On that basis, Howard County is not pressing their objection.

Your Honor, we also filed, in addition to a reply to

that objection, we filed a summary of modifications to the form of order of credit agreement, Docket number 6446. I'd like to briefly address the changes to be made since the filing of the motion.

THE COURT: Okay.

MR. BUTLER: Your Honor, with respect to the proposed order, we have made four changes to conform the order to the underlying agreements between the parties. First, we changed paragraph 5(b) to reflect that the pre-default carve-out for professional fees will increase from five to ten million dollars. That's because assuming that at some point the ECPA is approved, the investment agreement is approved. The transaction expenses defined under that agreement are included within the carve-out and, therefore, the amount of the carve-out was increased.

We added -- the second thing we did was add a clause 3 to the end of paragraph 5(a) to make it clear that the Tranche C super party claims are the pari passu with the right to the setoff claimants.

Third, we add a paragraph 10 and amended paragraph 11 to clarify that the lenders under both the DIP facility and the pre-petition facility would receive the fees, expenses and indemnities that they're entitled to under the respective loan documents.

And, finally, what is now paragraph 14, we added

language to make clear that the liens held by the pre-petition lenders are valid and that the pre-petition lenders' claims are valid and oversecured.

With respect to the credit agreement, we also filed a blacklined credit agreement yesterday as part of our reply. And there were two primary changes made to that credit agreement since the agreement we filed on December 26th. Your Honor may recall that while this motion was filed earlier, your scheduling order had indicated that we should file a credit agreement on December 26th. We did do that and serve it. There were two changes to the credit agreement that is before the Court today.

The first is the increase in the carve-out that I just mentioned that was described also in a DIP order. The second are provisions governing whether the debtors can undergo a change of corporate control without being in default of the terms of the credit agreement. The change of control provision contained in the December 26th agreement provided the acquisition of a controlling stake in the debtors by the plan investors was not a default but any other change of control constituted default. Given the Highland offer and given other facts and circumstances, the DIP lenders agreed that the occurrence of a change of control default based on the acquisition of Delphi's stock would be deleted. And that has been eliminated from the credit agreement.

Those, Your Honor, are the primary changes to the two documents. As Your Honor's aware, this motion deals with, really, two facilities the debtors have. First, our existing DIP facility, which consists of a 1.75 billion dollar revolving line of credit and a 250 million dollar term loan with a maturity date of October 8th, 2007.

The second facility this addresses are the secured obligations that arise under a third amended and restated credit agreement in a pre-petition period dated June 14th, 2005. And as of the petition date, the debt to that group of lenders was in the approximate amount of 2.6 billion dollars and it's now just slightly under, I think approximately 2.5 billion dollars.

Your Honor, this agreement provides for the refinancing of both of those transactions and to a DIP transaction of approximately 4.5 billion dollars. One thing I want to point out in connection with the pre-petition lenders agreement, this will resolve and will conclude obviously, upon closing, all the cash collateral provisions and protections that have been put in place with respect to the pre-petition facilities. Your Honor will recall we had some extended litigation about that in the beginning of the case.

I do want to point out that the pre-petition lenders have reserved their rights to challenge our ability under a plan of reorganization to discharge certain obligations under

the facility even though it's been repaid and they reserve the right to raise those issues in the planning confirmation context. And of course, we reserved our rights to argue to the contrary. That mostly has to do with indemnifications and other kinds of claims that they might argue would be contingent in nature.

Your Honor, with respect to the replacement facility, it is substantially similar in terms of its terms and conditions to the DIP facility. The primary changes here, from the debtors' perspective, are obviously the size. It's increased by about 2.5 billion dollars. But more importantly, it's the economics. As we said in our motion, we had the opportunity to take advantage of very robust capital markets that allowed us to execute what really is, you know, if not the large -- I think it's approximately the largest DIP ever financed. This financing at 4.5 billion dollars is being undertaken by our agents and placements on a best efforts basis. That's resulted in us spending relatively little money in terms of commitment and other transactions and, yet, we have a very reasonable degree of confidence that come next week, if Your Honor approves this, it in fact, will close. When it closes, we'll save about eight million dollars a month in interest expense as a result of being able to refinance the pre-petition security -- pre-petition facilities rates that are currently running us between twelve and a quarter, thirteen and

three quarters percent. And when you look at the base rate calculation under that facility -- to, at the moment, a cost of about 8.6 percent which is calculated at 325 basis points above LIBOR.

In addition, our DIP lenders have agreed to reduce the actual interest charged on the DIP itself from a post-petition basis by reducing that by twenty-five basis points. And that reduces the effective interest rate, at least estimated at close, from just over eight percent to about just under 7.9 percent. And so there's a reduction there. When you do the math, that saves us, based on the current usage of the DIP, about eight million dollars a month which happens to be about what the cost of putting this facility in place is. So the payback on this particular transaction is one month. We should be so fortunate to have those kinds of paybacks in large transactions we bring before the Court.

Your Honor, I also wanted to point out that, as this will result in the repayment of the pre-petition credit facility, the proposed order does provide that the January 18, 2007 deadline, under paragraph 16 of the existing DIP order for the creditors' committee to review the pre-existing liens and other aspects of the pre-existing transaction, would be terminated upon entry of the proposed order.

Your Honor, the last thing I would indicate to the Court, and just in terms of introduction to this, is that the

refinancing of the existing bank debt is permitted under the relevant transaction documents that we have been dealing with throughout this case. Article 2.10 of the pre-petition credit facility specifically permits the debtors to prepay the pre-petition credit facility and we had negotiations in connection with the existing DIP facility where the secured lenders waived their right to any prepayment premiums or prepayment penalties. There's also a paragraph of the existing DIP order, paragraph 12(c), which permits prepayment of the pre-petition credit facility if that prepayment is part of a transaction in which the obligations of the existing DIP facility and the pre-petition credit facility are repaid or refinanced in whole, which is exactly what the transaction before Your Honor does.

We have, Your Honor, in the courtroom Mr. Sheehan, the chief restructuring officer of the company, and Mr. Shaw, our investment banker from Rothschild, who were both instrumental in representing the company's interest in this refinancing transaction, including the solicitation of interests from various lenders, looking at competing facilities and ultimately deciding on the structure moving forward. We could either proffer that testimony or otherwise present them to Your Honor if Your Honor wants to hear them but there are no objections to the facility.

THE COURT: Well, why don't you give me just a brief proffer since the order refers to it?

MR. BUTLER: Your Honor, Mr. Sheehan is here and if called to testify, he would testify that the debtors solicited and entertained offers for replacement financing from lenders who had already conducted extensive due diligence of the debtor. He would testify that in the debtors' business judgment, the proposal by JP Morgan offered the most favorable terms due to the transaction cost savings and the efficiency that only the debtors' established lending agent could provide in that it gave, from the company's perspective, it was the business judgment that they were the most efficient party to be able to effect this refinancing transaction.

Mr. Sheehan would testify that the replacement financing facility will have essentially the same terms as the existing DIP facility except for terms which are, in the judgment of the debtors, more favorable to the debtors and the estates, including an increase in the size of the facility of 4.5 billion, a savings of considerable interest as I described to you in terms of the change in interest rates that I've previously described on the record and an economic cost to complete the new transaction in terms of fees of eight million dollars or less based on a best interest refinancing and undertaking by JP Morgan.

Mr. Sheehan would testify that the fees charged by JP Morgan and the lender group are, in the judgment of the debtors, comparable to those sought by the other bidding

investment bank group and the expenses will be recovered early in the first quarter of this year.

Your Honor, I think Mr. Sheehan would testify, finally, that, in the debtors' business judgment, the savings and beneficial terms to be achieved by this facility will and should maximize the recovery for all stakeholders and the refinancings in the best interest of the debtors' estates. That would be the sum and substance of Mr. Sheehan's testimony. I also have the proffer of Mr. Shaw.

THE COURT: Okay. And I'm assuming, given that there are no objections, no one wants to cross-examine Mr. Sheehan? Okay. I'll hear the other proffer.

MR. BUTLER: With respect to Mr. Shaw called to testify, he would testify that he's the director at Rothschild, Inc., which is the financial advisory investment banker for the debtors. He would testify that as a result of the favorable conditions in the capital markets coupled with the positive momentum in the debtors' reorganization, the debtors concluded with the assistance of Rothschild that refinancing the debtors' secured debt facilities at this moment in their cases could lead to a considerable savings and better position the debtors to merge from Chapter 11 reorganization.

Mr. Shaw would testify that Rothschild assisted the debtors in soliciting and reviewing offers for replacement financing from lenders who had already conducted extensive due

diligence to the debtors. He would testify that the proposal submitted by JP Morgan offered, in the opinion of Rothschild and the debtors, the most favorable terms due to the transaction cost savings and the efficiency of the debtors' established lending agent could provide.

He would testify that the terms of the replacement financing facility, including the fees charged by the lenders and the interest rates charged for the financing are fair, are comparable to those sought by the other bidding investment bank group and represent, in the opinion of Rothschild, the market rates for financing facility such as these.

Mr. Shaw would further testify that the rate decreases described in the motion are not guaranteed and only represent estimates of the rates that will be obtained based on their experience -- JP Morgan's experience in deals of this nature. But that the lack of underwriting has enabled the debtors to benefit from low fees in terms of fees paid to accomplish and implement the transaction.

Mr. Shaw would testify that, in Rothschild's analysis and the debtors' analysis, that the repayment of the pre-petition secured debt is appropriate because it appears to be, and the debtors believe that it is oversecured. And he would also finally testify that, based on his expertise and that of Rothschild's, Rothschild advised the debtors that the savings and beneficial terms to be achieved through the financing

facility should maximize the recovery for stakeholders and refinancing was, in his opinion, and is, in his opinion, in the best interest of the debtors' estate. That would be the sum and substance of Mr. Shaw's testimony.

THE COURT: Okay. Does anyone want to cross-examine Mr. Shaw? All right. I'll accept that proffer.

MR. BUTLER: Thank you, Your Honor. I have nothing further, Your Honor unless the Court has questions.

THE COURT: You said that this is expected to close next week?

MR. BUTLER: Yes, Your Honor.

THE COURT: And I guess that's why the document was dated January 9th?

MR. BUTLER: Yes, Your Honor.

THE COURT: Okay. All right.

MR. BUTLER: And that's also why we're asking the Court to make the order immediately effective.

THE COURT: Okay. And there's no pre-payment premium or penalty on this facility either, is there?

MR. BUTLER: No, Your Honor. No premium payment or penalty is being paid to anyone.

THE COURT: Okay. Does anyone have anything to say on this motion?

MR. SEIDER: Yes, Your Honor, if I might be heard briefly.

THE COURT: Sure.

MR. SEIDER: Mitchell Seider of Latham & Watkins on behalf of the official committee of unsecured creditors. Your Honor, after the debtors described the proposed financing to the committee, it certainly sounded attractive and so the committee set about doing diligence. We reviewed the documents that were filed with the Court as well as the fee letter and the commitment letter and the committee, through its professionals, were satisfied that the economics were as they had been represented to us and, therefore, it was attractive.

We along with the assistants of the committee's conflicts counsel made a few comments to the debtors with respect to the proposed order and the credit agreement. Those comments have been incorporated into the revised order and the revised credit agreement, as Mr. Butler described, and we are now satisfied with the form of order and with the credit agreement and, of course, we'd support the entry of the order.

THE COURT: Okay. And so your review included an assessment of the pre-petition secured lenders' rights?

MR. SEIDER: Yes, Your Honor, and I thank you for raising that. Conflicts counsel has been diligencing that issue since the time really of its hire and we are satisfied now that that is appropriate under the circumstances.

THE COURT: All right. Well, I reviewed the, not only the motion but the blacklined proposed order and

blacklined agreement and each of the changes made improves the transaction as far as the estates are concerned. It's obviously somewhat unusual to pay down two and a half billion of pre-petition debt. However, given the circumstances of this case, not only the committee's review of the lenders' liens but also as reflected by, among other things, the advents of any remaining objection to this motion, I think the various constituents of the debtors, as well as myself, are satisfied that the benefits of this refinancing, and that includes refinancing of the pre-petition debt, exceed the value to the estate of keeping the pre-petition debt in place and keeping the existing DIP in place.

So I will approve the refinancing as sought.

MR. BUTLER: Thank you, Your Honor. Your Honor, I have a clean copy of the final order, if I can pass it up.

THE COURT: That's fine. So that will get entered today. Given that there were no remaining objections and the benefit to the debtors of closing the transaction promptly, I have no problem with the waiver of the ten-day period.

MR. BUTLER: Thank you, Your Honor. Your Honor, that's the only matter on today's agenda.

THE COURT: Okay. Very well. Thank you.

(Whereupon this proceeding concluded at 10:23 a.m.)

I N D E X

R U L I N G S

C E R T I F I C A T I O N

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

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